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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/856,416	03/31/2004	Egbert A. Von Jakusch	54567USA1A.013	7900

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EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	03/02/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 03/02/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

09/856,416

Applicant(s)

VON JAKUSCH ET AL.

Examiner

Michael G. Bogart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 11-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 May 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections – 35 USC § 103

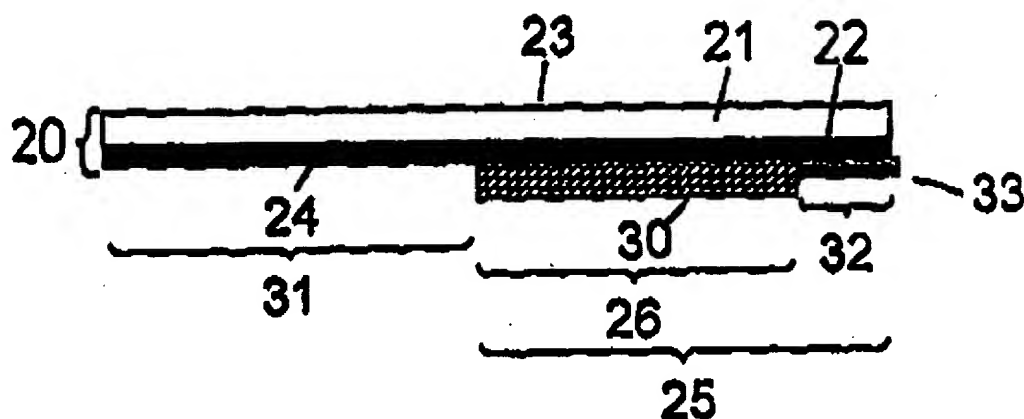
The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 1-10, 17 and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tuschy *et al.* (WO 96/21413 A1, hereinafter “Tuschy”) in view of Nguyen *et al.* (US 5,616,629 A; hereinafter “Nguyen”) and Newman *et al.* (US 3,716,437; hereinafter “Newman”).

Regarding claim 1, Tuschy teaches an adhesive tape (20) comprising a fibrous nonwoven layer (21) of fibers with a silicone release coating on one surface (23) and a pressure-sensitive adhesive layer (24) on the opposite surface (22)(page 5, lines 17-33; col. 6, lines 25-37)(figure 2, *infra*).



Tuschy does not disclose the specific type of silicone coating or that the nonwoven material is plastic.

Newman teaches a thermoplastic nonwoven and film laminate substrate for an adhesive tape (abstract; col. 2, lines 43-54). This provides for a tape that is both soft and has a high tensile strength.

Nguyen teaches the specific types of polydialkylsiloxane and acrylate release coatings (column 3, lines 11-45; column 5, line 56-column 6, line 62). This coating provides an optimized release force.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to select the laminate construction of Newman and the release coating of Nguyen to be used in the tape system of Tuschy in order to provide a soft, high tensile-strength substrate having a release coating with an acceptable release force.

Regarding the specific functional characteristics concerning peel adhesion, optimization of performance vectors within prior art conditions or through routine experimentation is not sufficient to patentably distinguish an invention over the prior art. MPEP § 2144.05.

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A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977).

In the instant case, Nguyen teaches the importance of achieving an optimal peel strength and releasability and disclose the results of peel and release testing (col. 1, lines 18-50; col. 12, lines 6-50). If the adhesive adheres too strongly to the release surface, the tape can be damaged when it is pulled off the release surface. Conversely, a tape with inadequate adhesion to a release surface may prematurely release from the release surface and expose the adhesive to the environment.

Regarding claim 8, Tuschy teaches a mechanical fastener (30) disposed on the adhesive layer (24)(figure 2).

Regarding claims 2 and 9, Newman teaches a film/fibrous layer laminate (abstract).

Regarding claims 3 and 10, the claimed ratio (10-15) of the average number of dialkylsiloxane units to the average number of acrylate and methacrylate groups of the polydialkylsiloxane is taught by Nguyen (col. 3, lines 11-37).

Regarding claim 4, see Nguyen col. 3, lines 11-37.

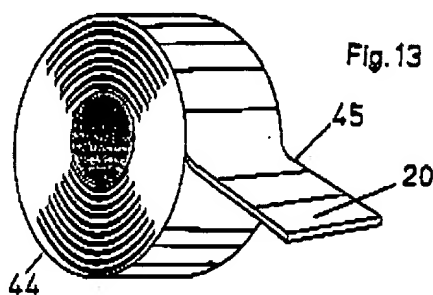
Regarding claim 5, Tuschy teaches a rubber based adhesive with a tackifying resin (page 6, line 25-page 7, line 4).

Regarding claim 6, Tuschy teaches styrene-isoprene-styrene block copolymers (page 6, line 35-page 7, line 4).

Regarding claim 7, Tuschy teaches a roll, see figure 13, *infra*.

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Regarding claim 17 and 18, Nguyen teaches ranges of polysiloxane to organic compound that overlaps that of the instant invention (col. 7, lines 44-65). In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art a prima facie case of obviousness exists. MPEP § 2144.05.



Response to Arguments

Applicant's arguments filed 08 December 2006 have been fully considered but they are not persuasive.

Applicants assert that Nguyen does not lend itself to use in a tape like that of Tuschy and that the preferred material of Nguyen is paper and films. This argument is not persuasive because Tuschy at page 5 lines 17-33 teaches the use of non-woven webs as be suitable as an adhesive tape substrate and being equivalent to paper or film for this purpose. Nguyen teaches at col. 9, lines 38-65 a number of suitable equivalents for a tape substrate, including paper, film and non-woven fabrics.

Applicants assert that Nguyen teaches higher relative adhesive release forces according to the Kiel test than that of the instant invention. This argument is not persuasive because as discussed supra, it would have been obvious to optimize the peel force of the adhesive tab and

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release surface of Tuschy in view of Newman and Nguyen. The differences in the specific tests protocols between that of Nguyen and the instant invention do not change the fact that it would have been obvious to optimize these values.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
26 February 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

